

These are the tentative rulings for civil law and motion matters set for Thursday, March 26, 2015, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Wednesday, March 25, 2015. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

NOTE: Effective July 1, 2014, all telephone appearances will be governed by Local Rule 20.8. More information is available at the court's website, www.placer.courts.ca.gov.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0026936 Beneficial California Inc. vs. Schmitt, James E.

Plaintiff's unopposed Motion Authorizing Execution on Judgment Debtor Spouse is denied as there is no proof of service in the file that comports to the requirements of CCP§1013.

2. M-CV-0058024 Perry, Todd vs. Wells Fargo Home Mortgage

Plaintiff's Motion to Compel Further Responses

As an initial matter, the court notes the motion includes two requests. The first seeks to compel further responses to RPDs and the second seeks further responses to special interrogatories. The court has reviewed plaintiff's motion but is unable to reach the merits as there is insufficient evidence provided to establish the motion is timely filed. Specifically, CCP§§2030.300(c) and 2031.310(c) require a motion to compel further responses to be filed within 45 days after service of the written responses. As currently presented, it appears the responses to the RPDs and special interrogatories were served by mail on December 10, 2014 and there is indication the parties stipulated to extend this period of time. For these reasons, the motion is denied. Defendant's request for sanctions is denied.

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Defendant's Motion to Compel Production of Supplemental RPDs

The motion is granted. Plaintiff shall provide verified responses and responsive documents to plaintiff's supplemental RPDs on or before April 10, 2015. Defendant's request for sanctions is denied.

Defendant's Motion for Leave to File Cross-Complaint

The motion is granted. Defendant Wells Fargo Bank shall file and serve its cross-complaint on or before April 3, 2015.

3. M-CV-0062722 Hines, James, et al vs. Andrews, Harry Lee Jr.

Defendant's Motion to Quash Writ of Execution, and alternatively, Request for Stay of Execution is denied. Plaintiff's request for sanctions is denied.

4. S-CV-0030424 Saladin, Jeffrey vs. Sanders, Trevor, et al

The motion is dropped from the calendar as the requested relief was granted pursuant to the ex parte order entered on March 9, 2015.

5. S-CV-0030446 Trangsrud, Claudine, et al vs. Del Webb California Corp.

Cross-Defendant Marticus Electric's Motion of Good Faith Settlement

The unopposed motion is granted. Based on the standards set forth in *Tech-Bilt v. Woodward Clyde & Associates* (1985) 38 Cal.3d 488, the settlement at issue is within the reasonable range of the settling tortfeasor's proportionate shares of liability for plaintiffs' injuries and therefore is in good faith within the meaning of CCP§877.6.

6. S-CV-0031202 L'Amoreaux, Roger, et al vs. Baldwin Contracting Co., et al

The motion for summary judgment is dropped from the calendar at the request of the moving party.

7. S-CV-0032520 Creasy, Michael, et al vs. Del Webb California Corporation

Intervenor Financial Pacific Insurance Company's Motion for Leave to Intervene

The unopposed motion is granted pursuant to CCP§387. Financial Pacific shall file its complaint-in-intervention on or before March 27, 2015.

Intervenor Peerless Insurance Company's Motion for Leave to Intervene

The unopposed motion is granted pursuant to CCP§387. Peerless Insurance shall file its complaint-in-intervention on or before March 27, 2015.

8. S-CV-0033644 Salwin, Roses vs. McElravey, Michael, et al

Defendants' Motion for Terminating Sanctions is denied in part. As to the request for terminating sanctions, the declines to make such an order at this time. Nonetheless, repeated conduct of failing to comply with discovery obligations may lead the Court to find an abuse of the discovery process and award sanctions, including the possibility of terminating sanctions, on that basis. (*Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.)

Defendants' alternative request to compel plaintiff's appearance at her deposition is granted. Plaintiff shall appear for her deposition at a time, place, and location to be noticed by defendants. Defendants' request for monetary sanctions in the amount of \$525 is granted.

9. S-CV-0034116 Global Commodities Trading Group vs. Penny Newman Grain

Plaintiff's Motion to Seal Records re Loan Agreement

The motion is granted. Court records are presumed to be open to the public unless confidentiality is required by law. (CRC Rule 2.550(c).) The court may order a record be filed under seal upon express findings of fact that establish: (1) an overriding interest that overcomes the public's right to access, (2) an overriding interest supporting sealing the record, (3) a substantial probability that the overriding interest will be prejudiced if the record is not sealed, (4) the sealing of the record is narrowly tailored, and (5) there are no less restrictive means to achieve the overriding interest. (CRC Rule 2.550(d).)

Plaintiff identifies a single area of confidentiality in this motion. Namely, the Loan Agreement entered into by plaintiff and third party Poinsett Rice and Grain. The Taylor declaration states the information in the loan agreement contains intricate business arrangements and confidential financial information. (Taylor declaration ¶¶5, 6.) The court finds that such information is recognized as an overriding interest that overcomes the right to public access to the record and supports sealing of the record. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46.) The court also finds that there is a substantial probability that this overriding interest will be prejudiced if the loan agreement is not sealed. Further, the court finds that the moving party has shown that sealing the loan agreement is narrowly tailored and the least restrictive means to achieve the overriding interest. As such, the court orders the loan agreement and the amendment to the agreement, both lodged with the court on February 13, 2015, shall be filed under seal forthwith. The court further notes that any person may make a motion to unseal the document in accordance with CRC Rule 2.551(h).

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Plaintiff's Motion to Seal Records re Joshua Price Deposition and Related Exhibits

The motion is granted. Court records are presumed to be open to the public unless confidentiality is required by law. (CRC Rule 2.550(c).) The court may order a record be filed under seal upon express findings of fact that establish: (1) an overriding interest that overcomes the public's right to access, (2) an overriding interest supporting sealing the record, (3) a substantial probability that the overriding interest will be prejudiced if the record is not sealed, (4) the sealing of the record is narrowly tailored, and (5) there are no less restrictive means to achieve the overriding interest. (CRC Rule 2.550(d).)

Plaintiff identifies portions of Joshua Price's deposition transcript along with Exhibits 2 and 3 associated with Mr. Price's deposition as the documents subject to confidentiality. The Taylor declaration states the information provided by Mr. Price at the deposition includes account statements and balance sheets that contain confidential and proprietary information. (Taylor declaration ¶¶5, 6.) The court finds that such information is recognized as an overriding interest that overcomes the right to public access to the record and supports sealing of the record. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46.) The court also finds that there is a substantial probability that this overriding interest will be prejudiced if portions of the deposition and Exhibits 2 and 3 are not sealed. Further, the court finds that the moving party has shown that sealing these specific documents is narrowly tailored and the least restrictive means to achieve the overriding interest. As such, the court orders the portions of the Joshua Price deposition and Exhibits 2 and 3, lodged with the court on March 2, 2015, shall be filed under seal forthwith. The court further notes that any person may make a motion to unseal the document in accordance with CRC Rule 2.551(h).

Defendant's Motion to Seal Records re Michael Nicoletti Deposition Transcript

The motion is granted. Court records are presumed to be open to the public unless confidentiality is required by law. (CRC Rule 2.550(c).) The court may order a record be filed under seal upon express findings of fact that establish: (1) an overriding interest that overcomes the public's right to access, (2) an overriding interest supporting sealing the record, (3) a substantial probability that the overriding interest will be prejudiced if the record is not sealed, (4) the sealing of the record is narrowly tailored, and (5) there are no less restrictive means to achieve the overriding interest. (CRC Rule 2.550(d).)

Defendant identifies a single area of confidentiality in this motion. Namely, portions of Michael Nicoletti's deposition transcript. The Jones declaration states the information provided by Mr. Nicoletti at the deposition includes defendant's confidential and proprietary information. (Jones declaration ¶3.) The court finds that such information is recognized as an overriding interest that overcomes the right to public access to the record and supports sealing of the record. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1222, fn. 46.) The court also finds that

there is a substantial probability that this overriding interest will be prejudiced if portions of the deposition are not sealed. Further, the court finds that the moving party has shown that sealing this specific document is narrowly tailored and the least restrictive means to achieve the overriding interest. As such, the court orders the portions of the Michael Nicoletti deposition, lodged with the court on February 13, 2015, shall be filed under seal forthwith. The court further notes that any person may make a motion to unseal the document in accordance with CRC Rule 2.551(h).

10. S-CV-0034376 United Auburn Indian Comm. vs. Penta Building Group, et al

Application for Order Admitting Roy Bach Pro Hac Vice

The unopposed application is granted.

Application for Order Admitting Rebecca A. Ross Pro Hac Vice

The unopposed application is granted.

11. S-CV-0034380 Clark, Quincey Lee, et al vs. Chavez, Manuel Wolfgang

The motion to compel further responses to interrogatories is dropped from the calendar at the request of the moving party.

12. S-CV-0034586 Epic HR, Inc. vs. Alves, Steven G.

Cross-Defendants' Motion for Partial Judgment on the Pleadings

Ruling on Request for Judicial Notice

Cross-defendants' request for judicial notice is granted.

Ruling on Motion

A motion for judgment on the pleadings is akin to a demurrer but brought after the time for filing a demurrer has expired. (*Code of Civil Procedure section 438(f)(2); Ludgate Insurance Co. v. Lockheed Martin Corp. (2000) 82 Cal.App.4th 592, 602.*) The motion may be granted where a cross-complaint does not state sufficient facts to constitute a cause of action. (*Code of Civil Procedure section 438(c)(1)(B)(ii).*) In making this determination, the court deems all alleged facts to be true and the pleading is given a reasonable interpretation by reading it as a whole so that the pleading is liberally construed with a view toward attaining substantial justice. (*Ludgate Insurance Co. v. Lockheed Martin Corp. (2000) 82 Cal.App.4th 592, 602.*) Cross-defendants bring this motion to challenge the second cause of action for false promise, third cause of action for intentional interference with economic relationship, and fifth cause of action for conspiracy to defraud. Upon review of the cross-complaint, these causes of action are sufficiently pled. The motion is denied.

13. S-CV-0034782 Magee, Cathy vs. Carl, Tyler, et al

The unopposed motion to stay pursuant to the Servicemembers Civil Relief Act is granted. An OSC re Stay is set for September 29, 2015 at 11:30 a.m. in Department 40.

14. S-CV-0034868 Romanov, Alexandria vs. Cruickshank, Simon, et al

The petition for minor's compromise is continued to April 16, 2015 at 8:30 a.m. in Department 40 at the request of the moving party.

15. S-CV-0034936 Johnson, James T., III, et al vs. Wells Fargo Bank, N.A.

The demurrer is sustained without leave to amend. A demurrer tests the legal sufficiency of the pleadings, not the truth of the plaintiff's allegations or accuracy of the described conduct. (*Picton v. Anderson Union High School* (1996) 50 Cal.App.4th 726, 733.) As such, all properly pled facts are assumed to be true as well as those that are judicially noticeable. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Gomes v. Countrywide Home Loans, Inc.* (2011) 192 Cal.App.4th 1149, 1153.) A review of the second amended complaint shows that the three causes of action are still deficient. The first cause of action still fails to allege sufficient facts to support unlawful, unfair, or fraudulent acts on the part of the moving defendants. (*Puentes v. Wells Fargo Home Mortg., Inc.* (2008) 160 Cal.App.4th 638, 643-644.) The second cause of action still fails to allege the contractual basis to support the implied covenant claim nor do the allegations support any alleged violations. As to the third cause of action, there are still insufficient factual allegations to support sufficient conduct on the part of the moving defendants that exceeds the normal scope of a lender. (*Nymark v. Heart Fed. Sav. & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096.)

This is the third attempt by plaintiffs to properly allege causes of action against the moving defendants. Plaintiffs have not remedied the deficiencies and have not demonstrated an ability to remedy the deficiencies. For these reasons, the demurrer is sustained without leave to amend.

16. S-CV-0035012 Fagundes, Patrick vs. JPMorgan Chase Bank, NA, et al.

Motion to Expunge Notice of Pendency of Action

Preliminary Matters

As an initial matter, plaintiff filed a request on March 24, 2015 to continue the current hearing date. This, however, is not plaintiff's motion and the request was not properly served on defendant nor is there any indication in the request that plaintiff attempted to meet and confer with defendant regarding the continuation. In light of this and the lack of a good cause showing, plaintiff's request for a continuance is denied.

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Ruling on Request for Judicial Notice

Defendant's request for judicial notice is granted.

Ruling on Motion

The motion is granted. A party with an interest in real property may move at any time to expunge a lis pendens where (1) the complaint does not contain a real property claim, (2) the plaintiff cannot establish the probable validity of his or her claim, or (3) adequate relief may be secured to the plaintiff by the moving party's posting of a bond. (*Code of Civil Procedure sections 405.30-405.33.*) The party opposing the motion has the burden of showing the existence of a real property claim. (*CCP§405.30; Kirkeby v. Superior Court (2004) 33 Cal.4th 642, 647.*) The plaintiff has failed to make a showing that the FAC contains a viable real property claim nor has plaintiff established a probable validity of his claims.

17. S-CV-0035286 Weimer, Robert, Jr. vs. Nationstar Mortgage, LLC, et al

The demurrer is continued, on the court's own motion, to April 2, 2015 at 8:30 a.m. in Department 43. The court apologizes to the parties for any inconvenience.

18. S-CV-0035638 Poroshina, Natalia vs. Shellpoint Mortgage Servicing, et al

The demurrer is dropped from the calendar as a first amended complaint was filed on March 24, 2015.

19. S-CV-0035790 Black Rock Global vs. Rice, Robert, et al

Plaintiff's application for writ of attachment and right to attach order is granted pursuant to CCP§484.090.

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